

HOUSE BILL No. 1091

DIGEST OF HB 1091 (Updated January 28, 1998 5:09 pm - DI 96)

Citations Affected: IC 5-14; IC 36-8; noncode.

Synopsis: Meet and confer for public safety employees. Requires certain units of local government to meet and confer with the unit's public safety employees concerning wages, hours of employment, and other conditions of employment. Exempts units with a population of less than 5,000. Provides that a public safety employee may not engage in a strike. Provides that an agreement between an employer and an employee organization may not require a unit to engage in deficit financing. Provides that an agent designated by a unit to meet and confer with an employee representative is not a governing body for open door law purposes.

Effective: July 1, 1998.

Tabaczynski

January 6, 1998, read first time and referred to Committee on Labor and Employment.
January 21, 1998, amended, reported — Do Pass.
January 28, 1998, read second time, amended, ordered engrossed.



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Reprinted
January 29, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

HOUSE BILL No. 1091

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-14-1.5-2, AS AMENDED BY P.L.50-1995,
2 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 SEPTEMBER 1, 1998]: Sec. 2. For the purposes of this chapter:
4 (a) "Public agency" means the following:
5 (1) Any board, commission, department, agency, authority, or
6 other entity, by whatever name designated, exercising a portion of
7 the executive, administrative, or legislative power of the state.
8 (2) Any county, township, school corporation, city, town, political
9 subdivision, or other entity, by whatever name designated,
10 exercising in a limited geographical area the executive,
11 administrative, or legislative power of the state or a delegated
12 local governmental power.
13 (3) Any entity which is subject to either:
14 (A) budget review by either the state board of tax
15 commissioners or the governing body of a county, city, town,
16 township, or school corporation; or
17 (B) audit by the state board of accounts.

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- 1 (4) Any building corporation of a political subdivision of the state
 2 of Indiana that issues bonds for the purpose of constructing public
 3 facilities.
- 4 (5) Any advisory commission, committee, or body created by
 5 statute, ordinance, or executive order to advise the governing
 6 body of a public agency, except medical staffs or the committees
 7 of any such staff.
- 8 (6) The Indiana gaming commission established by IC 4-33,
 9 including any department, division, or office of the commission.
- 10 (7) The Indiana horse racing commission established by IC 4-31,
 11 including any department, division, or office of the commission.
- 12 (b) "Governing body" means two (2) or more individuals who are:
 13 (1) a public agency that:
 14 (A) is a board, a commission, an authority, a council, a
 15 committee, a body, or other entity; and
 16 (B) takes official action on public business;
 17 (2) the board, commission, council, or other body of a public
 18 agency which takes official action upon public business; or
 19 (3) any committee appointed directly by the governing body or its
 20 presiding officer to which authority to take official action upon
 21 public business has been delegated.
- 22 An agent or agents appointed by a school corporation to conduct
 23 collective bargaining on behalf of that school corporation **or**
 24 **designated by a unit (as defined in IC 36-1-2-23) to meet and confer**
 25 **with an employee representative under IC 36-8-20** does not
 26 constitute a governing body for purposes of this chapter.
- 27 (c) "Meeting" means a gathering of a majority of the governing body
 28 of a public agency for the purpose of taking official action upon public
 29 business. It does not include:
 30 (1) any social or chance gathering not intended to avoid this
 31 chapter;
 32 (2) any on-site inspection of any project or program;
 33 (3) traveling to and attending meetings of organizations devoted
 34 to betterment of government; or
 35 (4) a caucus.
- 36 (d) "Official action" means to:
 37 (1) receive information;
 38 (2) deliberate;
 39 (3) make recommendations;
 40 (4) establish policy;
 41 (5) make decisions; or
 42 (6) take final action.

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1 (e) "Public business" means any function upon which the public
2 agency is empowered or authorized to take official action.

3 (f) "Executive session" means a meeting from which the public is
4 excluded, except the governing body may admit those persons
5 necessary to carry out its purpose.

6 (g) "Final action" means a vote by the governing body on any
7 motion, proposal, resolution, rule, regulation, ordinance, or order.

8 (h) "Caucus" means a gathering of members of a political party or
9 coalition which is held for purposes of planning political strategy and
10 holding discussions designed to prepare the members for taking official
11 action.

12 (i) "Deliberate" means a discussion which may reasonably be
13 expected to result in official action (defined under subsection (d)(3),
14 (d)(4), (d)(5), or (d)(6)).

15 (j) "News media" means all newspapers qualified to receive legal
16 advertisements under IC 5-3-1, all news services (as defined in
17 IC 34-4-15-3), and all licensed commercial or public radio or television
18 stations.

19 (k) "Person" means an individual, a corporation, a limited liability
20 company, a partnership, an unincorporated association, or a
21 governmental entity.

22 SECTION 2. IC 36-8-20 IS ADDED TO THE INDIANA CODE
23 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
24 SEPTEMBER 1, 1998]:

25 **Chapter 20. Meet and Confer for Local Government**
26 **Employers and Public Safety Employees**

27 **Sec. 1. It is the purpose of this chapter to promote full**
28 **communication between employers and their public safety**
29 **employees concerning questions of wages, hours of employment,**
30 **and other terms and conditions of the employment of public safety**
31 **employees. It is also the purpose of this chapter to improve**
32 **relations between employers and public safety employees.**

33 **Sec. 2. (a) This chapter does not apply to an employer that has**
34 **adopted by ordinance, resolution, charter, amendment, or**
35 **executive order provisions and procedures that permit an**
36 **employee to form, join, or assist an employee organization for the**
37 **purpose of bargaining collectively.**

38 **(b) This chapter may not be construed to annul, modify, or**
39 **limit a collective bargaining agreement or memorandum of**
40 **understanding entered into between an employer and a**
41 **representative before September 1, 1998.**

42 **(c) This chapter does not apply to a unit having a population**



1 of less than five thousand (5,000).

2 **Sec. 3.** As used in this chapter, "employee" means a full-time
3 employee of a police or fire department. The term does not include
4 a person in an upper level policy making position (as defined in
5 IC 36-8-1-12).

6 **Sec. 4.** As used in this chapter, "employee organization" means
7 an organization that includes employees as members and has a
8 primary purpose to represent the members of the organization on
9 issues concerning grievances, wages, rates of pay, hours of
10 employment, or conditions of employment.

11 **Sec. 5.** As used in this chapter, "employer" means a unit (as
12 defined in IC 36-1-2-23).

13 **Sec. 6.** As used in this chapter, "recognized representative"
14 means an employee organization selected under section 7 of this
15 chapter.

16 **Sec. 7. (a)** An employee organization is the recognized
17 representative of the employees of an employer if:

18 (1) the employee organization was recognized by the
19 employer before September 1, 1998, as the sole
20 representative of the employer's employees; or

21 (2) after August 31, 1998, the employee organization is
22 elected to be the sole representative under subsection (c).

23 (b) After August 31, 1998, an employer shall conduct an
24 election if thirty percent (30%) of the employees of the employer
25 sign a petition requesting an election to determine a recognized
26 representative. The election shall be conducted at least thirty (30)
27 but not more than sixty (60) days after the employer receives a
28 petition under this subsection.

29 (c) An employee organization is the sole recognized
30 representative of the employees of an employer if it receives more
31 than fifty percent (50%) of the votes cast in an election under
32 subsection (b).

33 **Sec. 8. (a)** All employees have the right to meet and freely
34 assemble to discuss their interests as employees and to form, join,
35 and assist an employee organization.

36 (b) The rights guaranteed under subsection (a) include the
37 right to solicit membership, to join employee organizations to
38 present their views, and to have dues deducted and submitted to
39 the recognized representative.

40 **Sec. 9.** This chapter is not intended to circumscribe or modify
41 the existing right of an employer to:

42 (1) direct the work of the employer's employees;



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- 1 (2) hire, promote, demote, transfer, assign, and retain
2 employees;
3 (3) suspend, discharge, or otherwise discipline employees for
4 just cause;
5 (4) maintain the efficiency of governmental operations;
6 (5) relieve employees from duties because of lack of work or
7 for other legitimate reasons; and
8 (6) take actions that may be necessary to carry out the
9 mission of the employer in emergencies.
- 10 **Sec. 10. Employers may not do the following:**
- 11 (1) Interfere with, restrain, or coerce employees in the
12 exercise of the rights guaranteed under this chapter.
13 (2) Dominate, interfere with, or assist in the formation or
14 administration of an employee organization, or contribute
15 financial or other support to the employee organization.
16 However, an employer may permit employees to meet and
17 confer and represent the interests of bargaining during
18 working hours without loss of time or pay.
19 (3) Discriminate in regard to hiring or conditions of
20 employment to encourage or discourage membership in an
21 employee organization.
22 (4) Discharge or otherwise discriminate against an employee
23 because the employee has filed a complaint, an affidavit, or
24 a petition, or given information or testified under this
25 chapter.
26 (5) Refuse to meet and confer in good faith with recognized
27 representatives.
- 28 **Sec. 11. (a) An employee organization or the recognized**
29 **representative of the employees of an employer that elects to meet**
30 **and confer with an employer must notify the employer in writing**
31 **that the employee organization intends to exercise its rights under**
32 **this chapter.**
- 33 (b) Except as provided by section 13 of this chapter, an
34 employer who has received a written notice under subsection (a)
35 shall meet and confer in good faith with the employee organization,
36 or the recognized representative if a recognized representative has
37 been elected under this chapter, at reasonable times, including
38 meeting in advance of the budget making process, to discuss issues
39 and proposals regarding wages, hours of employment, and other
40 conditions and terms of employment.
- 41 (c) If an agreement is reached between the parties under
42 subsection (b), the parties shall execute a written agreement

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1 incorporating the terms of the agreement. At the request of either
2 party, an agreement shall provide procedures for the settlement of
3 a question arising under the agreement.

4 **Sec. 12. (a)** As used in this section, "deficit financing" means
5 expenditures that exceed the money legally available to the
6 employer in any budget year.

7 (b) An employer may not enter into an agreement under
8 section 11 of this chapter that will place the employer in a position
9 of deficit financing. An agreement or collective bargaining contract
10 is voidable to the extent that an employer must engage in deficit
11 financing in order to comply with the terms of the contract.

12 **Sec. 13. (a)** An employer is not required to meet and confer
13 with an employee organization under this chapter unless the
14 employee organization has notified the employer in writing before
15 September 1, 2000, that the employee organization elects to
16 exercise its rights under this chapter.

17 (b) Notwithstanding subsection (a), after August 31, 2000, an
18 employer may elect to meet and confer and enter into an
19 agreement under section 11 of this chapter even if the employer did
20 not receive a written notice from an employee organization before
21 September 1, 2000.

22 (c) Notwithstanding any provision of this chapter, an employer
23 may elect to terminate its duty to meet and confer under this
24 chapter if:

25 (1) after meeting and conferring with an employee
26 organization under section 11 of this chapter the employer
27 and the employee organization are unable to reach a written
28 agreement under this chapter; and

29 (2) at least sixty percent (60%) of the members of the
30 legislative body of the unit vote to terminate the employer's
31 duty to meet and confer under this chapter and written
32 notice of the action of the legislative body is given to the
33 employee organization.

34 **Sec. 14. (a)** An employee or employee organization may not
35 participate in a strike against an employer.

36 (b) An employee engaging in a strike is subject to discharge by
37 the employer under IC 36-8-3-4.

38 (c) A recognized representative that engages in or sanctions a
39 strike loses the right to represent the employees for one (1) year
40 from the date of the action.

41 (d) An employer may not pay an employee for days the
42 employee was engaged in a strike.

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1 **Sec. 15. The term of any written agreement entered into under**
2 **this chapter may not exceed forty-eight (48) months.**
3 SECTION 3. [EFFECTIVE SEPTEMBER 1, 1998] (a) **This act**
4 **does not:**
5 (1) **apply to or abrogate a contract or an agreement in effect**
6 **on August 31, 1998; or**
7 (2) **preclude arbitration on a provision in the contract or**
8 **agreement.**
9 (b) **This SECTION expires September 1, 2001.**
10 SECTION 4. [EFFECTIVE SEPTEMBER 1, 1998] **The**
11 **provisions of this act are severable in the manner provided by**
12 **IC 1-1-1-8(b).**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1091, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective date in SECTION 1 with "[EFFECTIVE SEPTEMBER 1, 1998]".

Page 3, delete lines 22 through 42.

Delete pages 4 through 6, begin a new paragraph and insert:

"SECTION 2. IC 36-8-20 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE SEPTEMBER 1, 1998]:

Chapter 20. Meet and Confer for Local Government Employers and Public Safety Employees

Sec. 1. It is the purpose of this chapter to promote full communication between employers and their public safety employees concerning questions of wages, hours of employment, and other terms and conditions of the employment of public safety employees. It is also the purpose of this chapter to improve relations between employers and public safety employees.

Sec. 2. (a) This chapter does not apply to an employer that has adopted by ordinance, resolution, charter, amendment, or executive order provisions and procedures that permit an employee to form, join, or assist an employee organization for the purpose of bargaining collectively.

(b) This chapter may not be construed to annul, modify, or limit a collective bargaining agreement or memorandum of understanding entered into between an employer and a representative before September 1, 1998.

(c) This chapter does not apply to a unit having a population of less than five thousand (5,000).

Sec. 3. As used in this chapter, "employee" means a full-time employee of a police or fire department. The term does not include a person in an upper level policy making position (as defined in IC 36-8-1-12).

Sec. 4. As used in this chapter, "employee organization" means an organization that includes employees as members and has a primary purpose to represent the members of the organization on issues concerning grievances, wages, rates of pay, hours of employment, or conditions of employment.

Sec. 5. As used in this chapter, "employer" means a unit (as defined in IC 36-1-2-23).



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Sec. 6. As used in this chapter, "recognized representative" means an employee organization selected under section 7 of this chapter.

Sec. 7. (a) An employee organization is the recognized representative of the employees of an employer if:

- (1) the employee organization was recognized by the employer before September 1, 1998, as the sole representative of the employer's employees; or
- (2) after August 31, 1998, the employee organization is elected to be the sole representative under subsection (c).

(b) After August 31, 1998, an employer shall conduct an election if thirty percent (30%) of the employees of the employer sign a petition requesting an election to determine a recognized representative. The election shall be conducted at least thirty (30) but not more than sixty (60) days after the employer receives a petition under this subsection.

(c) An employee organization is the sole recognized representative of the employees of an employer if it receives more than fifty percent (50%) of the votes cast in an election under subsection (b).

Sec. 8. (a) All employees have the right to meet and freely assemble to discuss their interests as employees and to form, join, and assist an employee organization.

(b) The rights guaranteed under subsection (a) include the right to solicit membership, to join employee organizations to present their views, and to have dues deducted and submitted to the recognized representative.

Sec. 9. This chapter is not intended to circumscribe or modify the existing right of an employer to:

- (1) direct the work of the employer's employees;
- (2) hire, promote, demote, transfer, assign, and retain employees;
- (3) suspend, discharge, or otherwise discipline employees for just cause;
- (4) maintain the efficiency of governmental operations;
- (5) relieve employees from duties because of lack of work or for other legitimate reasons; and
- (6) take actions that may be necessary to carry out the mission of the employer in emergencies.

Sec. 10. Employers may not do the following:

- (1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed under this chapter.



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(2) Dominate, interfere with, or assist in the formation or administration of an employee organization, or contribute financial or other support to the employee organization. However, an employer may permit employees to meet and confer and represent the interests of bargaining during working hours without loss of time or pay.

(3) Discriminate in regard to hiring or conditions of employment to encourage or discourage membership in an employee organization.

(4) Discharge or otherwise discriminate against an employee because the employee has filed a complaint, an affidavit, or a petition, or given information or testified under this chapter.

(5) Refuse to meet and confer in good faith with recognized representatives.

Sec. 11. (a) An employee organization or the recognized representative of the employees of an employer that elects to meet and confer with an employer must notify the employer in writing that the employee organization intends to exercise its rights under this chapter.

(b) Except as provided by section 13 of this chapter, an employer who has received a written notice under subsection (a) shall meet and confer in good faith with the employee organization, or the recognized representative if a recognized representative has been elected under this chapter, at reasonable times, including meeting in advance of the budget making process, to discuss issues and proposals regarding wages, hours of employment, and other conditions and terms of employment.

(c) If an agreement is reached between the parties under subsection (b), the parties shall execute a written agreement incorporating the terms of the agreement. At the request of either party, an agreement shall provide procedures for the settlement of a question arising under the agreement.

Sec. 12. (a) As used in this section, "deficit financing" means expenditures that exceed the money legally available to the employer in any budget year.

(b) An employer may not enter into an agreement under section 11 of this chapter that will place the employer in a position of deficit financing. An agreement or collective bargaining contract is voidable to the extent that an employer must engage in deficit financing in order to comply with the terms of the contract.

Sec. 13. (a) An employer is not required to meet and confer

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with an employee organization under this chapter unless the employee organization has notified the employer in writing before September 1, 2000, that the employee organization elects to exercise its rights under this chapter.

(b) Notwithstanding subsection (a), after August 31, 2000, an employer may elect to meet and confer and enter into an agreement under section 11 of this chapter even if the employer did not receive a written notice from an employee organization before September 1, 2000.

(c) Notwithstanding any provision of this chapter, an employer may elect to terminate its duty to meet and confer under this chapter if:

- (1) after meeting and conferring with an employee organization under section 11 of this chapter the employer and the employee organization are unable to reach a written agreement under this chapter; and
- (2) at least two-thirds (2/3) of the members of the legislative body of the unit vote to terminate the employer's duty to meet and confer under this chapter and written notice of the action of the legislative body is given to the employee organization.

Sec. 14. (a) An employee or employee organization may not participate in a strike against an employer.

(b) An employee engaging in a strike is subject to discharge by the employer under IC 36-8-3-4.

(c) A recognized representative that engages in or sanctions a strike loses the right to represent the employees for one (1) year from the date of the action.

(d) An employer may not pay an employee for days the employee was engaged in a strike.

Sec. 15. The term of any written agreement entered into under this chapter may not exceed forty-eight (48) months.

SECTION 3. [EFFECTIVE SEPTEMBER 1, 1998] (a) This act does not:

- (1) apply to or abrogate a contract or an agreement in effect on August 31, 1998; or
- (2) preclude arbitration on a provision in the contract or agreement.

(b) This SECTION expires September 1, 2001.

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SECTION 4. [EFFECTIVE SEPTEMBER 1, 1998] The provisions of this act are severable in the manner provided by IC 1-1-1-8(b)."

and when so amended that said bill do pass.

(Reference is to House Bill 1091 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 8, nays 6.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1091 be amended to read as follows:

Page 6, line 29, delete "two-thirds (2/3)" and insert "**sixty percent (60%)**".

(Reference is to House Bill 1091 as printed January 22, 1998.)

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